

### REMARKS

In the final Office action mailed August 8, 2006, claims 1-15 and 18-22 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,830,224 ("Cohn et al."). Claims 16 and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohn et al in view of U.S. Patent No. 5,728,122 ("Leschinsky et al."). Claims 35, 37, 38, 40, were rejected under 35 U.S.C. § 103(a) as being unpatentable over Flaherty et al. in view of Leschinsky et al. Claims 36, 39, and 41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Flaherty et al. in view of Leschinsky et al. and further in view of Cohn et al. Claim 51 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Leschinsky et al. in view of Cohn et al. Claims 50, 52, 53, and 70-72 were rejected under 35 U.S.C. 103(a) as being unpatentable over Leschinsky et al in view of U.S. Patent No. 6,235,024 ("Tu").

Reconsideration of the present application is respectfully requested.

### REJECTIONS BASED ON COHN

Claims 1-15 and 18-22 were rejected under Section 102(b) as being anticipated by Cohn; claims 16 and 17 were rejected under Section 103(a) as being unpatentable over Cohn in view of Leschinsky. In addition, claims 36, 39, and 41 were rejected under Section 103(a) as being unpatentable over Flaherty in view of Leschinsky and further in view of Cohn; and claim 51 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Leschinsky in view of Cohn.

With respect to claim 1, Applicant respectfully submits that Cohn does not teach or suggest the claimed step of "identifying the junction in the hollow anatomical structure based on feedback from the catheter without imaging the hollow anatomical structure." The final Office action does not identify where this step is disclosed in Cohn. To the extent that it is alleged that this step is disclosed in Cohn, Applicant respectfully submits that the teachings of Cohn have been misconstrued since Cohn teaches using fluoroscopy and IVU imaging techniques (*see* col. 27, lines 2-15). Applicant respectfully submits that this does not teach the claimed invention, and that the claims are allowable over Cohn.

In addition, the final Office action asserts that Cohn "is still applying energy to the structure and eventually leading to smaller structure (col. 19 lines 8-28)." However, the passage in Cohn referenced in the Office action refers to "generating an AV fistula." A "fistula" is an abnormal connection or passageway between organs or vessels. Creating a connection or passageway between vessels need not lead to a smaller structure.

Dependent claim 2 recites that the claimed junction is the sapheno-femoral junction. Cohn, however, makes no reference to the sapheno-femoral junction, and the Office action does not identify any medical procedure which would require the formation of an AV fistula at the sapheno-femoral junction. Applicant respectfully submits that claim 2 is allowable over Cohn as well.

Dependent claims 3-7 further define the step of identifying the junction in the hollow anatomical structure as including the light from a fiber optic device (*see* claim 3), and measuring the length of the fiber optic device introduced until the light changes (*see* claim 5). The passages in Cohn relied upon in the final Office action do not refer to the

use of a fiber optic device for the purpose of identifying the junction. For example, column 25, lines 16-33 of Cohn, refers to the use of a fiber optic cable to transmit laser energy to perforate the vascular wall. There is no reference to using the light from the fiber optic to identify any junction or any structure. Column 27, lines 25-61 of Cohn, on the other hand, does not even reference the fiber optic cable, nor the step of measuring any length (instead, the passage discusses the benefits of a "monorail" mode of guidewire passage which avoids the cumbersome and difficult task of passing a guidewire through the entire length of a catheter). Applicant respectfully submits that claims 3-7 are allowable over Cohn as well.

With respect to dependent claims 12-15, those claims further define the step of identifying the junction in the hollow anatomical structure as including a radio frequency signal. The passages in Cohn cited in the final Office action, on the other hand, refer to the use of radiofrequency current to perforate a vessel to generate a fistula. For example, column 20, lines 13-21, states that, the electrode 230 "completes the radiofrequency circuit during the perforation process in-vivo in order to generate an AV fistula." No step of identifying a junction using a radiofrequency signal is disclosed in Cohn.

Applicant respectfully requests that the final rejection of claims 1-15, 18-22, 36, 39, 41 and 51, under Sections 102 and/or 103 based on Cohn be withdrawn. *See* MPEP 706.07(e) ("If new facts or reasons are presented such as to convince the examiner that the previously rejected claims are in fact allowable ..., then the final rejection should be withdrawn.").

## REJECTIONS BASED ON LESCHINSKY

Claims 35, 37, 38, 40, were rejected under 35 U.S.C. § 103(a) as being unpatentable over Flaherty in view of Leschinsky. Claims 36, 39, and 41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Flaherty in view of Leschinsky and further in view of Cohn.

Claim 35 recites the step of "marking externally," and "positioning ... such that the transducer is aligned with the external marking." The final Office action relies on column 2, lines 24-29 of Leschinsky et al. to teach the use of reference marks. However, Applicant respectfully submits that the teachings of Leschinsky have been misconstrued. Leschinsky teaches a mark on the device itself. *See, e.g.*, Leschinsky at col. 5, lines 12-14 ("In FIG. 2 it can be seen that sheath 14 is provided with a reference mark 28."). The teachings of a reference as a whole are to be considered in a Section 103 analysis, and this explicit teaching in Leschinsky must be considered. *See* MPEP 2141.02 ("A prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention." (emphasis in original)).

Applicant respectfully submits that this teaching in Leschinsky was not considered in the final Office action, and that neither Flaherty nor Leschinsky discloses the claimed step of "marking externally the desired location," or the claimed "external marking" recited in independent claim 35. Applicant respectfully requests that the rejections of claims 35-41 based (in part or in whole) on Flaherty and Leschinsky be withdrawn.

## REJECTION BASED ON TU

Claims 50, 52, 53, and 70-72 were rejected under Section 103(a) as being unpatentable over Leschinsky in view of Tu.

Independent claim 50 recites "applying energy ... such that the reduced diameter of the hollow anatomical structure effectively ligates the hollow anatomical structure." Dependent claims 70 and 72 states that the step of applying energy "results in occlusion of the hollow anatomical structure."

Leschinsky is directed to a system for using a homeostatic plug to close arterial punctures and allow the artery to heal and continue to function. Tu is directed to a device for treating arteriosclerosis, which is a narrowing of the artery. Neither reference suggests ligation or occlusion of the artery. This would involve closing off the artery. Instead, these references are directed to keeping the artery open so it can continue to function.

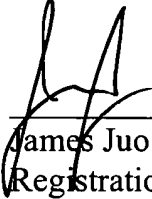
Applicant respectfully requests that the rejections of claims based on Leschinsky in view of Tu be withdrawn.

CONCLUSION

Applicant respectfully submits that the pending claims are allowable, and respectfully requests favorable reconsideration of the present application at an early date. If the Examiner has any comments or questions regarding any of the foregoing, kindly telephone the undersigned.

Respectfully submitted,

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